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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,226	01/29/2002	James Burnham	3691-278	3311

23117 7590 08/25/2003
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EXAMINER

LOPEZ, CARLOS N

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 08/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/058,226	Applicant(s) BURNHAM, JAMES	
	Examiner Carlos Lopez	Art Unit 1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/9/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>#5</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group II in Paper No. 9 is acknowledged.

Priority

Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows: An updated status of Application SN 09/565,368 is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1) Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bracken et al (US 3,554,725). Bracken discloses a glass rolling method for making patterned glass. A glass-melting tank 16 provides molten glass ribbon to a patterned glass forming equipment 16, which comprises a nip formed by upper and lower forming rolls 66 and 70. As noted by Demarest, the upper forming roll 66 includes annular ridges 67 and valleys 68 adapted to form the desired pattern on the ribbon glass (Col. 5, lines 67-71). The glass ribbon is then capped, cut (Col. 5, lines 52-54). Bracken is silent disclosing a pattern comprising intersecting ridges of different lengths. However, as pointed out by Bracken, the disclosed glass making method is drawn to making both

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regular conventional plate glass and pattern glass of any desired pattern and thickness (Col. 1 lines 69-70). Thus, at the time the invention was made it would have been obvious to a person of ordinary skill in the art to use Bracken's method for providing a notoriously known glass pattern such an antique glass pattern having intersecting ridges of varying lengths. Applicant's definition of an antique glass pattern includes intersecting ridges of varying length (the mere reference that its an antique glass (pattern) thus it would be obvious to a person of ordinary skill in the art to have provided a known pattern such as the claimed antique glass pattern if user so desired. Additionally, the term "pattern" as used by Bracken encompasses an "antique" glass pattern.

2) Claims 1-2, and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bracken et al (US 3,554,725) in view of Kozmin (US 3,847, 582). Claim 1 and 9 additionally recite providing a working temperature for the glass of about 1900-2400 Fahrenheit. As taught by Kozmin, the working temperature of the glass melt that is transferred to forming roll means 2, is at 2192 °F - 2372 °F (See Kozmin Bridging paragraph of Col. 3-4). Thus, absent any indication of the temperature of the glass that is being transferred to Bracken's forming rolls 66 and 70 (which corresponds to Kozmin's forming roll means 2), it would have been obvious to a person of ordinary skill in the art at the time the invention was made that Bracken's glass temperature prior to reaching the forming rolls would have a conventional temperature such as disclosed by Kozmin and claimed by applicant.

The claimed limitation of annealing is disclosed by Bracken at Col. 2, lines 55-60.

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As for claim 1, the claimed intersect angles of the ridges would depend on the desired pattern of the glass plate.

As for claims 5-6, the claimed height of the ridges would be dependent on the desired pattern.

3) Claims 1-9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooke et al (US 3,914,118). Brooke discloses a glass rolling method for making patterned glass. A glass-melting tank 5 (hearth) provides molten glass ribbon to a nip formed by upper and lower forming rolls 4. As noted by Brooke, the upper forming roll 4 is provided with an indented pattern cut in its surface so as to form a corresponding pattern on the upper surface of the glass ribbon 2 (Col. 3, lines 40-43). The glass ribbon is annealed at zone 11 and then cut (Col.3, lines 55-56). Brooke is silent disclosing a pattern comprising intersecting ridges of different lengths. However, the type of glass pattern imparted on the glass plate would depend on the desired glass pattern, which includes well-known, old "antique" glass patterns. Thus, at the time the invention was made it would have been obvious to a person of ordinary skill in the art to use Brooke's method for providing a notoriously known glass pattern such an antique glass pattern having intersecting ridges of varying lengths. The mere naming of a glass pattern as "antique", Applicant provides an admission that a glass pattern having

intersecting ridges of varying length and angles is known in the prior art. Hence, it would be obvious to a person of ordinary skill in the art to have provided, if desired, to impart known patterns such as the claimed antique glass pattern to Brooke's glass plate.

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Alternatively, the term "pattern" as used by Brooke would encompass an "antique" glass pattern.

In regards to the claimed working temperature of 1900-2400 Fahrenheit, as noted above, absent any indication by Brooke, it is assumed that the working temperature has a conventional magnitude such as disclosed by Kozmin (see above) of 2192 °F - 2372 °F.

As for claim 3, the glass ribbon exits the nip at 1562°C.

As for claim 4, the water-cooled forming rolls 4 (See Col. 3, line 35) would be expected to be internally water cooled and the rolls at a temperature substantially lower than the glass ribbon in order to impart the pattern on the glass plate.

As for claims 5-6, the claimed height of the ridges would depend on the desired glass pattern.

4) Claims 1-2, 7-9 and 16 are rejected under 35 U.S.C. 103(a) as being obvious over Burnham et al (US 6,372,327).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR

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1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2). Claim 12 of Burham discloses all the limitations of the instant claims 1, 9, and 16, except for the newly limitation of providing an "antique" glass pattern. The definition of antique glass pattern in Burham is shared by instant claims 1, 9 and 16, which is a plurality of intersecting ridges of different lengths defined in an exterior surface thereof (glass) wherein at least some of the ridges intersect one another at angles of from about 5-80 degrees. Thus U. S. Patent No. 6,372,327 glass pattern is considered "antique".

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5) Claims 1, 9 and 16 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 6,372,327. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 12 of U. S. Patent No. 6,372,327 discloses all the limitations of the instant claims 1, 9, and 16, except for the newly limitation of providing an "antique" glass pattern. The definition of antique glass pattern in the U. S. Patent No. 6,372,327 and that given in instant claims 1, 9 and 16 are the same, which is a plurality of intersecting ridges of different lengths defined in an exterior surface thereof (glass) wherein at least some of the ridges intersect one another at angles of from about 5-80 degrees. Thus U. S. Patent No. 6,372,327 glass pattern is considered "antique".

6) Claims 1,9, and 16 are directed to an invention not patentably distinct from claim 12 of commonly assigned U. S. Patent No. 6,372,327. Specifically, claim 12 discloses all the limitations of the instant claims 1, 9, and 16, except for the newly limitation of providing an "antique" glass pattern. However, the definition of a glass pattern in the U. S. Patent No. 6,372,327 is shared by the instant claims 1, 9 and 16, which is a plurality of intersecting ridges of different lengths defined in an exterior surface thereof (glass)

wherein at least some of the ridges intersect one another at angles of from about 5-80 degrees. Thus U. S. Patent No. 6,372,327 pattern is considered "antique" due to having the same definition as of the U. S. Patent No. 6,372,327 imparted glass pattern.

Conclusion

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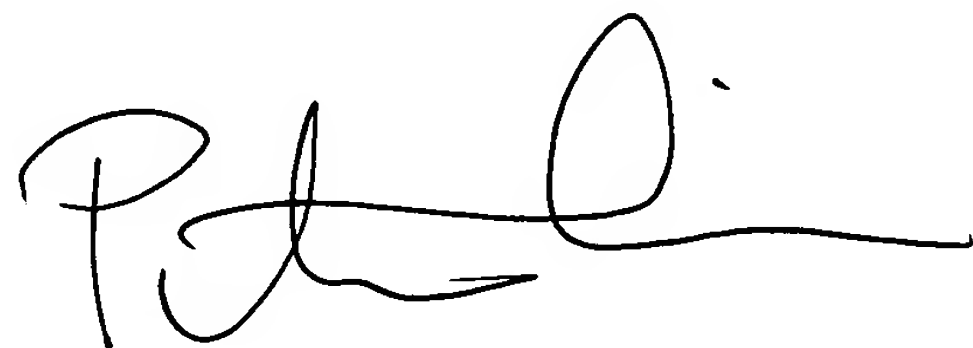
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References D-I have been cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is (703) 605-1174. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7718 for regular communications and (703) 305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

C.L
August 1, 2003

A handwritten signature in black ink, appearing to read 'Peter Chin', with a stylized, flowing script.

PETER CHIN
PRIMARY EXAMINER